IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10318 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LATABEN D/O BECHARBHAI GORBADBHAI & 4 - Petitioner(s)
Versus
COMPETENT AUTHORITY & DY. COLLECTOR (ULC) & 3 - Respondent(s)

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Appearance :
(MR MUKESH R SHAH) for Petitioner(s) : 1 - 2.MR RN SHAH for Petitioner(s) : 1 - 2.None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 3,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MR SATYAM CHHAYA, AGP for Respondent(s) : 3,
MR MD PANDYA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 08/12/2006

ORAL JUDGMENT

1. The short facts of the case are that, as per the petitioners, qua the land bearing Survey No. 284 situated at Vadodara, the petitioners had acquired the right. However, as per the respondent authority, the petitioners had no interest over the land. It appears that Form No.6 under the Urban Land (Ceiling and Regulation) Act,1976 (hereinafter referred to as 'the Act') was filed by deceased Becharbhai G. Patel on behalf of the family, but in the list of the members of the family, the name of Becharbhai and his wife were shown and no minor sons were shown nor any interest of the major son or daugher was shown.

2. It appears that thereafter, the said Becharbhai expired on 07.06.1980. The competent authority after scrutinising the form filed under the Act, issued draft statement under Section 8 of the Act and in response to the draft statement, the son of the deceased Becharbhai, Shri Harmanbhai appeared and submitted the reply. It may be recorded that as per the mutation entry in the revenue record vide No. 3144, the legal heirs of deceased Becharbhai were shown as Shri Harmanbhai and Jamnaben being widow. The competent authority ultimately for the reasons recorded in the order found that the land admeasuring 1668 Sq. Mtrs. deserves to be declared as surplus land and accordingly, order was passed under Section 8(4) of the Act. It

appears that thereafter, Notification dated 12.11.1980 under Section 10(1) of the Act was also issued in pursuance to the order passed under Section 8(4) of the Act on 29.11.1984. Thereafter, the Notification under Section 10(3) of the Act was also issued on 07.02.1985 for vesting of the land in Government. It appears that thereafter, on 24.05.1985, notice was given under Section 10(5) of the Act for taking over of the possession and on 27.09.1985, possession of the surplus land admeasuring 1668 sq. mtrs. bearing Survey No. 284 at village Gorva (hereinafter referred to as 'the land in question') was taken over and not only that but, Harmanbhai, son of deceased Becharbhai had entrusted the possession to the competent authority and accordingly, the proceedings as such were already concluded under the Act.

3. It appears that the petitioner herein, i.e. Lataben Becharbhai, claiming herself to be the daughter of Becharbhai having derived the interest under the family settlement, by contending that no notice was served upon her, preferred an appeal under Section 33 of the Act before the Urban Land Tribunal being Appeal No. 10/93 after a period of about 8 years from the date on which the possession was taken over and after a period of about 9 years from the date on which the final order came to be passed under Section 8(4) of the Act. The said Appeal as per

the order dated 30.04-06.1994 came to be dismissed by the Urban Land Tribunal. It is under these circumstances, the petitioners preferred the present petition for challenging the order passed by the Tribunal and the petitioners has prayed that it may be declared that no land remains with the respondent Nos. 2 & 3 out of Survey No. 284 since the petitioners are entitled to the additional unit and therefore, the holding was within the permissible limit.

4. I have heard Mr. R.N. Shah, learned counsel appearing for the petitioners and Mr. Chhaya, learned AGP for the State Authorities.

5. It deserves to be recorded that the present petition is not filed by Smt. Lataben D/o. Becharbhai, but is filed through Harmanbhai, holding as Power of Attorney of Lataben. Further, it appears that the position of the land as prevailing on the appointed date when the Act came into force in the year 1976 is required to be considered. On the day when the Act came into force, the deceased Becharbhai was alive and was holding the land and in the Form, which was filled under Section 6 of the Act, the interest shown of the person in the property was only of husband and wife and the name of the petitioner as daughter was not shown as the person having interest in the land. It is true

that the form was filled on behalf of the family, but as per the provisions of the Act, the word family is defined under Section 2(f) of the Act, which includes the individual, wife or husband, as the case may be of such individual and their minor children. Therefore, the minor children's share is included. Even as per the petitioners, she has derived the alleged interest in the property only by family settlement.

6. Even if the claim of the petitioner is considered for the sake of examination, then also, it appears that the family settlement is never acted upon. As per Entry No. 3144 dated 12.07.1980, after the expiry of deceased Becharbhai, copy whereof is produced with the affidavit in reply of the competent authority and the Additional Collector at Annexure-RII, the property were shown as in succession of all the legal heirs of deceased Becharbhai including the petitioner herein. Thereafter, vide Entry No. 3177 dated 04.10.1980, Nilaben Becharbhai, another daughter of the petitioner, abandoned the right over the land and in view of the family settlement, her name was deleted being successor of the deceased Becharbhai qua the property in question. As a consequence thereof, the petitioner ceased to have any interest over the land in question because in the revenue record of the entry produced at Annexure-RIII

with the affidavit in reply, there is reference to the family settlement and recording of the written consent by the persons including the petitioner herein who abandoned the right. Therefore, the petitioner had no interest over the land even when Form No.6 was processed in the proceedings under Section 8 of the Act. Further, the son of the deceased Becharbhai, Harmanbhai, who remained present at the time of the proceedings under Section 8 were conducted, had also disclosed for the interest by him and by his mother Jamnaben and at that stage also, it was not disclosed that the petitioner had any interest over the land.

7. It was contended on behalf of the petitioner that under the alleged family settlement dated 09.07.1974, the interest of the petitioner was created and therefore, on the date when the Act came into force, the petitioner can be said as having share in the property and therefore, entitled to the additional unit. The said family settlement as such, is not registered and there is no authenticated record to show that the family settlement was acted upon after the alleged date of 09.07.1974. Further, two revenue entry Nos. 3144, which as been entered on 12.07.1980 read with entry No. 3177 dated 04.10.1980, both go to show that neither any family settlement was acted upon nor the name of the petitioner was shown as having interest in

the land based on the family settlement prior to the Act came into force. Therefore, on the appointed dated, deceased Becharbhai was only holding the property and the wife of the deceased Becharbhai had only interest in the land. As per the Act, for the family of husband, wife and minor son or daughter, only one unit is permissible. Further, vide entry No. 3177 dated 04.10.1980, there was also abandonment of the right by the petitioner in favour of the brother and mother. Under these circumstances, the claim of the petitioner for additional unit as if she was having interest in the land on the appointed date is ill-founded and was rightly rejected by the Tribunal.

8. Apart from the above aspects, on the date when the appeal came to be filed by the petitioner, the appeal was not only barred by delay of 8-9 years, but the land had already vested to the Government and the possession of the land was also not only taken over but was entrusted by Harmanbhai, the legal representative of the deceased Becharbhai having accepted the order passed under Section 8(4) of the Act. The proceedings came to be concluded after vesting of the land and after taking over of the possession of the land and after a period of 8 years, the appeal was preferred. Therefore, under these circumstances, it cannot be said that any error of jurisdiction is committed by

the Tribunal or the exercise of the discretion is perverse to the record, which deserves to be interfered with by this Hon'ble Court under Article 227 of the Constitution.

9. In view of the above, no case is made out for interference and hence, the petition is rejected. Rule discharged. Interim relief vacated. No order as to costs.

(JAYANT PATEL, J.)

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